

Cause No. 2018-22086

**DIANE JOHNSON, Individually and as
Representative of the Estate of JACK W.
JOHNSON, deceased,**

Plaintiff,

vs.

**EECI, INC., as successor to the liability
of Ebasco Services, Inc.,**

Defendant.

§ **IN THE DISTRICT COURT OF**
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§
§
§ **HARRIS COUNTY, TEXAS**
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§
§ **129th JUDICIAL DISTRICT**

PLAINTIFF'S FIRST AMENDED ORIGINAL PETITION

COMES NOW Plaintiff and complains of the Defendant listed herein and for causes of action would show the Court and the Jury as follows:

1.

DISCOVERY CONTROL PLAN

Pursuant to Texas Rule of Civil Procedure 190, Plaintiff respectfully requests that discovery in this case be conducted under a Level 3 Discovery Control Plan.

2.

PARTIES

Plaintiff is Diane Johnson, Individually and as Representative of the Estate of Jack W. Johnson, decedent. Diane Johnson is the surviving spouse of Jack W. Johnson. The last three digits of her social security number is 969. Diane Johnson is resident of Alabama.

Jack W. Johnson was employed from approximately 1954-2011 as an electrician working at numerous locations throughout the United States, including but not limited to Illinois, Virginia,

Louisiana, Texas, Pennsylvania, Mississippi, Nebraska, Oklahoma, Alabama, Oregon, Virginia, California, Colorado and Nebraska.

During the course of his employment at the locations mentioned above, the Mr. Johnson was exposed to and inhaled, ingested or otherwise absorbed large amounts of asbestos fibers emanating from certain products he was working with and around that were manufactured, sold, distributed or installed by **Defendant EECI, INC.** **EECI, INC. is successor to the liability of Ebasco Services, Inc. (“Ebasco”) and is a corporation organized and existing under and by virtue of the laws of the State of Nevada and doing business in the State of Texas, but has not designated a resident agent for service of process. This corporation can be served c/o CSC Services of Nevada, Inc., 2215-B Renaissance Dr., Las Vegas, NV 89119 pursuant to the Texas Long-Arm Statute, Tex. Civ. Prac. & Rem. Code §§ 17.041-.045. Defendant will be served through the Secretary of State for the State of Texas.**

3.

JURISDICTION

Jurisdiction is proper in this Court in that the amount in controversy exceeds the minimal jurisdictional limits of this Court, and the Defendant is subject to personal jurisdiction in the State of Texas. Moreover, the Defendant has conducted a substantial amount of business activity and has committed a tort, in whole or in part, in Texas. Every claim arising under the Constitution, treaties, or laws of the United States is expressly disclaimed, including any claim arising from an act or omission on a federal enclave, or of any officer of the U.S. or any agency or person acting under him occurring under color of such office. Plaintiff reserves the right to later amend the capacity in which any Defendant has been sued upon a finding that they bear additional responsibility for Plaintiff’s damages.

4.

VENUE

Venue of this action is proper as to the Plaintiff in Harris County, Texas under Tex. C.P.R.C. 15.002(a) because a substantial part of the events or omissions giving rise to the Plaintiff's claims occurred in Harris County. Specifically, Plaintiff is making a claim for Decedent's exposure to asbestos at a facilities located in Harris County.

5.

BACKGROUND

Jack Johnson had an extensive history of exposure to asbestos containing materials during his career as a journeyman electrician. Mr. Johnson started working in the electrical field in 1950 and was exposed to asbestos on a regular and frequent basis up through the early 1990s. These exposures led to his contraction of mesothelioma and his death on June 13, 2014.

Defendant named above bears responsibility in causing Plaintiff and Decedent's injuries in the individual capacities in which they have been sued. Plaintiff reserve the right to later amend the capacity in which any Defendant has been sued upon a finding that they bear additional responsibility for Plaintiff's damages.

6.

TEX. CIV. PRAC. & REM. CODE §90.006 (2005)

The citizens of the State of Texas and their state representatives believe that exposure to asbestos, particularly through inhalation of asbestos fibers, causes malignant and nonmalignant diseases, including mesothelioma and asbestosis. As such, it is the policy of the State of Texas to protect the right of people with impairing asbestos-related injuries to pursue their claims for compensation in a fair and efficient manner through the Texas court system. Act of May 16, 2005,

79th Leg., R.S., ch. 97, § 1(n), 2005 Tex. Gen. Laws 169.

In keeping with the stated policy of the State of Texas, Plaintiff brings the following claims against **EECI, Inc.**, which is responsible for her husband's asbestos-related injuries and subsequent death. Accordingly, Plaintiff attaches to their original petition as Exhibit 1, Mr. Johnson's Tex. Civ. Prac. & Rem. Code 90.003 medical report as required by Tex. Civ. Prac. & Rem. Code 90.006.

7.

STRICT LIABILITY

Plaintiff pleads and invokes the doctrine of strict liability against Ebasco because it was engaged in the sale of asbestos containing products. Plaintiff will show that the Defendant's products were defectively marketed and designed, that such defective conditions rendered their products unreasonably dangerous in the intended and reasonably anticipated use of their products, and that such defective conditions existed at the time they left Defendant's possession. Defendant knew or should have foreseen the risk of harm of their unreasonably dangerous products. Defendant's acts or omissions in these regards were producing causes of Plaintiff's injuries, damages, and/or death.

8.

NEGLIGENCE

Mr. Johnson was exposed to large quantities of asbestos and asbestos-containing products. The law imposed various duties on Defendant with respect to the safety and welfare of others such as Mr. Johnson. Defendant breached those duties by a multitude of acts, omissions, and/or undertakings which amount to negligence. Defendant knew, or in the exercise of ordinary care,

should have known that the asbestos-containing products and/or machinery they sold, supplied, distributed, re-labeled, applied, installed, specified, bought, removed, manipulated, or otherwise exposed Mr. Johnson to was extremely dangerous and harmful to his health. As a proximate cause of such negligence, Plaintiff has suffered the injuries and damages complained of herein.

Additionally, without waiving any specific acts of negligence as to Defendant, Plaintiff hereby gives notice of intent to rely on the doctrine of *res ipsa loquitur*, as Defendant's asbestos-containing products were under the exclusive management and control of Defendant, and given the character of Decedent's injuries and damages are such that they would ordinarily not have occurred in the absence of negligence.

Plaintiff would further show that Ebasco was one of the principal contractors that designed, built, and maintained the facilities that Mr. Johnson worked within. Ebasco was negligent in its sale, provision, installation, use, maintenance, distribution, repair, abatement, removal, and/or tear-out, of dangerous and deadly asbestos-containing products causing exposures to workers such as Mr. Johnson. The Defendant failed to warn of the hazards known to them or to prevent these exposures from occurring was a proximate cause of decedent's injuries and damages.

9.

DAMAGES

As a direct and proximate result of Ebasco's negligence, Mr. Johnson sustained a multitude of severe and deadly injuries. Upon trial of this case, Plaintiff respectfully requests the Court and Jury to determine the amount of loss Mr. Johnson has incurred. Mr. Johnson was damaged in the following particulars:

1. Prior to his death, Mr. Johnson suffered great physical pain and mental anguish;

2. Prior to his death, Mr. Johnson incurred hospital and/or medical and/or pharmaceutical and/or other expenses;

3. Prior to his death, Mr. Johnson suffered physical impairment;

4. Prior to his death, Mr. Johnson suffered permanent partial disability;

5. Prior to his death, Mr. Johnson required medical monitoring and required domestic help and nursing care due to his disabilities;

6. Prior to onset of his symptoms, Mr. Johnson was extremely active and participated in numerous hobbies and activities, and, as a result of his illnesses, he was prevented from engaging in all of said activities that were normal to him prior to developing symptoms from his disease; and,

7. Loss of earning capacity and lost wages.

As a direct and proximate result of Ebasco's negligence, Mr. Johnson's spouse sustained a multitude of injuries. Upon trial of this case, Plaintiff respectfully request the Court and Jury to determine the amount of loss Mr. Johnson's spouse has incurred. Mr. Johnson's spouse has been damaged in the following particulars:

1. Witnessing the conscious physical pain and suffering sustained by Mr. Johnson prior to his death;

2. Witnessing the mental anguish sustained by Mr. Johnson prior to his death;

3. Witnessing the physical impairment suffered by Mr. Johnson prior to his death;

4. Witnessing the disfigurement suffered by Mr. Johnson prior to his death;

5. Reasonable funeral and burial expenses incurred by the Mrs. Johnson and the Jack Johnson Estate;

6. The loss of household services, consortium, pecuniary loss, companionship and society that Mrs. Johnson received from Mr. Johnson prior to his last illnesses and death;

7. The mental anguish suffered by Mrs. Johnson as a consequence of the last illnesses and death of Mr. Johnson;

8. Punitive and exemplary damages as allowed by law to punish **EECI, Inc.** for proximately causing Mr. Johnson's untimely death;

9. Prejudgment interest on all elements of damages as allowed by law; and

10. Loss of inheritance.

The actions and inactions of **EECI, Inc.**, as specifically alleged herein above, whether taken separately or together, were of such a character as to constitute a pattern or practice of intentional wrongful conduct and/or malice resulting in the damages, diseases and death of Mr. Johnson. More specifically, Ebasco consciously and/or deliberately engaged in oppression, fraud, willfulness, wantonness and/or malice with regard to Mr. Johnson and should be held liable in punitive and exemplary damages to Plaintiff.

Additionally, the actions, omissions, and/or undertakings of Ebasco were of such a character as to make Ebasco guilty of malice. The conduct of Ebasco involved an extreme degree of risk, considering the probability and magnitude of potential harm to others. In addition, Ebasco had actual subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, and welfare of others. Further, notwithstanding the above, Ebasco's conduct is of such a nature that it violates Tex. Civ. Prac. & Rem. Code § 41.008(c)(4) and (7). Accordingly, as a result of the conduct of Ebasco, Plaintiff seeks exemplary damages in such an amount as to be found to be proper under the facts and circumstances.

Notwithstanding the above, when formulating the amount of exemplary damages, the jury should also consider:

1. the nature of Defendant's wrong;
2. the character of Defendant's conduct;
3. the degree of Defendant's culpability;
4. the situation and sensibilities of the Plaintiff and Mr. Johnson;
5. the extent to which Defendant's conduct offends a public sense of justice and propriety; and
6. the net worth of Defendant.

Additionally, Pursuant to Tex. R. Civ. P. 47, Plaintiffs seeks monetary relief of over \$1,000,000.00.

10.

WRONGFUL DEATH & SURVIVAL DAMAGES

Plaintiff is entitled to negligence, wrongful death, and survival damages. Further, heirs and wrongful death beneficiaries of Mr. Johnson will seek general and special damages including, but not limited to, damages for survival and wrongful death claims that they have sustained both in their individual capacity and as personal representatives of the Estate of Jack W. Johnson:

1. The conscious physical pain and suffering sustained by Mr. Johnson prior to his death;
2. The mental anguish sustained by Mr. Johnson prior to his death;
3. The physical impairment suffered by Mr. Johnson prior to his death;
4. The disfigurement suffered by Mr. Johnson prior to his death;

5. Reasonable and necessary medical expenses incurred by Mr. Johnson prior to his death;
6. Reasonable funeral and burial expenses incurred by Plaintiff and the Estate of Jack W. Johnson;
7. Mr. Johnson's lost earning capacity;
8. The loss of household services, consortium, pecuniary loss, companionship and society that Plaintiff received from Mr. Johnson prior to his last illnesses and death;
9. The mental anguish suffered by Plaintiff as a consequence of the last illnesses and death of Mr. Johnson;
10. Punitive and exemplary damages as allowed by law to punish **EECI, Inc.** for proximately causing Mr. Johnson's untimely death;
11. Prejudgment interest on all elements of damages as allowed by law; and,
12. Any other actual, compensatory, punitive and exemplary damages recoverable pursuant to the wrongful death and survival act as set out by Chapter 71 of the Texas Civil Practices and Remedy Code.

11.

JURY DEMAND

Plaintiff demands that all issues of fact in this case be tried to a Jury and has tendered the Jury fee herewith.

12.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the Defendant be cited to appear and answer herein, and that upon final trial, the Plaintiff have judgment against Defendant, and recover damages from the Defendant in an amount to be determined by a jury, plus costs of Court, interest as allowed by Texas law, and for such other and further relief, general and special, legal and equitable, to which this Plaintiff may show themselves to be justly entitled.

Respectfully submitted,

SHRADER & ASSOCIATES, LLP

By: /s/ Ross D. Stomel
Ross Stomel (TSB#24041979)
Robert E. Shuttlesworth (TSB#24033184)
3900 Essex Ln., Suite 390
Houston, TX 77027
Telephone: 713/782-0000
Facsimile: 713/571-9605
Email: robert@shraderlaw.com

Certificate of Service

I hereby certify that a true and correct copy of the above was forwarded to and served upon all counsel of record on this the 7th day of June, 2018 in accordance with the Texas Rules of Civil Procedure.

/s/ Ross D. Stomel
Ross D. Stomel

CIVIL PROCESS REQUEST

4/3/2018 11:22:52 AM
Chris Daniel - District Clerk
Harris County
Envelope No: 23598915
By: ELDRIDGE, WALTER F
Filed: 4/3/2018 11:22:52 AM

FOR EACH PARTY SERVED YOU MUST FURNISH ONE (1) COPY OF THE PLEADING
FOR WRITS FURNISH TWO (2) COPIES OF THE PLEADING PER PARTY TO BE SERVED

CASE NUMBER: _____ CURRENT COURT: _____

TYPE OF INSTRUMENT TO BE SERVED (See Reverse For Types): Original Petition

FILE DATE OF MOTION: _____ 03 29 2018
Month/ Day/ Year

SERVICE TO BE ISSUED ON (Please List Exactly As The Name Appears In The Pleading To Be Served):

1. NAME: Sempra Energy

ADDRESS: 488 8th Ave., San Diego, CA 92101

AGENT, (if applicable): _____

TYPE OF SERVICE/PROCESS TO BE ISSUED (see reverse for specific type): _____

SERVICE BY (check one):

☐ ATTORNEY PICK-UP ☐ CONSTABLE

☒ CIVIL PROCESS SERVER - Authorized Person to Pick-up: Clear Legal Phone: 281-528-2071

☐ MAIL ☐ CERTIFIED MAIL

☐ PUBLICATION:

Type of Publication: ☐ COURTHOUSE DOOR, or

☐ NEWSPAPER OF YOUR CHOICE: _____

☐ OTHER, explain _____

2. NAME: _____

ADDRESS: _____

AGENT, (if applicable): _____

TYPE OF SERVICE/PROCESS TO BE ISSUED (see reverse for specific type): _____

SERVICE BY (check one):

☐ ATTORNEY PICK-UP ☐ CONSTABLE

☐ CIVIL PROCESS SERVER - Authorized Person to Pick-up: _____ Phone: _____

☐ MAIL ☐ CERTIFIED MAIL

☐ PUBLICATION:

Type of Publication: ☐ COURTHOUSE DOOR, or

☐ NEWSPAPER OF YOUR CHOICE: _____

☐ OTHER, explain _____

ATTORNEY (OR ATTORNEY'S AGENT) REQUESTING SERVICE:

NAME: Ross D. Stomel TEXAS BAR NO./ID NO. 24041979

MAILING ADDRESS: 3900 Essex Lane., Suite 390, Houston, TX 77027

PHONE NUMBER: 713 782-0000 FAX NUMBER: 713 571-9605
area code phone number area code fax number

EMAIL ADDRESS: ross@shraderlaw.com

CIVIL CASE INFORMATION SHEET (REV. 2/13)

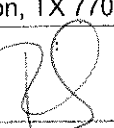
CAUSE NUMBER (FOR CLERK USE ONLY): _____

COURT (FOR CLERK USE ONLY): _____

STYLED Diane Johnson, Individ. and as Rep of the Estate of Jack W. Johnson, dec'd vs. Sempra Energy

(e.g., John Smith v. All American Insurance Co.; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

1. Contact information for person completing case information sheet: Name: <u>Ross D. Stomel</u> Email: <u>ross@shraderlaw.com</u> Address: <u>3900 Essex Ln., Suite 390</u> Telephone: <u>713-782-0000</u> City/State/Zip: <u>Houston, TX 77027</u> Fax: <u>713-571-9605</u> Signature:  State Bar No: <u>24041979</u>		Names of parties in case: Plaintiff(s)/Petitioner(s): <u>Diane Johnson</u> Defendant(s)/Respondent(s): <u>Sempra Energy</u> [Attach additional page as necessary to list all parties]		Person or entity completing sheet is: <input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____	
2. Indicate case type, or identify the most important issue in the case (select only 1):					
Civil			Family Law		
Contract <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract:	Injury or Damage <input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises Product Liability <input checked="" type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: <input type="checkbox"/> Other Injury or Damage:	Real Property <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other:	Marriage Relationship <input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children Other Family Law <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other:	Post-judgment Actions (non-Title IV-D) <input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocity (UIFSA) <input type="checkbox"/> Support Order	
Employment <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment:			Other Civil <input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetrate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other:		
Tax <input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax			Probate & Mental Health Probate/Wills/Intestate Administration <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other:		
3. Indicate procedure or remedy, if applicable (may select more than 1):					
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action		<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment		<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover	
4. Indicate damages sought (do not select if it is a family law case):					
<input type="checkbox"/> Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees <input type="checkbox"/> Less than \$100,000 and non-monetary relief <input type="checkbox"/> Over \$100,000 but not more than \$200,000 <input type="checkbox"/> Over \$200,000 but not more than \$1,000,000 <input checked="" type="checkbox"/> Over \$1,000,000					

Louisiana, Texas, Pennsylvania, Mississippi, Nebraska, Oklahoma, Alabama, Oregon, Virginia, California, Colorado and Nebraska.

During the course of his employment at the locations mentioned above, the Mr. Johnson was exposed to and inhaled, ingested or otherwise absorbed large amounts of asbestos fibers emanating from certain products he was working with and around that were manufactured, sold, distributed or installed by **Defendant SEMPRA ENERGY**. Sempra Energy is successor to the liability of Ebasco Services, Inc. ("Ebasco") and is a corporation organized and existing under and by virtue of the laws of the State of California. Its address is 488 8th Avenue, San Diego, California, 92101 and will be served through the Secretary of State of the State of Texas.

3.

JURISDICTION

Jurisdiction is proper in this Court in that the amount in controversy exceeds the minimal jurisdictional limits of this Court, and the Defendant is subject to personal jurisdiction in the State of Texas. Moreover, the Defendant has conducted a substantial amount of business activity and has committed a tort, in whole or in part, in Texas. Every claim arising under the Constitution, treaties, or laws of the United States is expressly disclaimed, including any claim arising from an act or omission on a federal enclave, or of any officer of the U.S. or any agency or person acting under him occurring under color of such office. Plaintiff reserves the right to later amend the capacity in which any Defendant has been sued upon a finding that they bear additional responsibility for Plaintiff's damages.

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C.P.R.C. 15.002(a) because a substantial part of the events or omissions giving rise to the Plaintiff's claims occurred in Harris County. Specifically, Plaintiff is making a claim for Decedent's exposure to asbestos at a facilities located in Harris County.

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BACKGROUND

Jack Johnson had an extensive history of exposure to asbestos containing materials during his career as a journeyman electrician. Mr. Johnson started working in the electrical field in 1950 and was exposed to asbestos on a regular and frequent basis up through the early 1990s. These exposures led to his contraction of mesothelioma and his death on June 13, 2014.

On February 26, 2018, Defendant Sempra Energy announced that the U.S. Bankruptcy Court for the District of Delaware confirmed the plan of reorganization for Energy Future Holdings Corp. (Ebasco) and provided its final approval for Sempra Energy's agreement to acquire EFH's assets and liabilities. Jack and Diane Johnson filed a proof of claim in the bankruptcy and are now entitled to bring suit directly against Sempra Energy's for Ebasco's responsibility in causing Plaintiff and Decedent's injuries in the individual capacities in which they have been sued. Plaintiff reserve the right to later amend the capacity in which any Defendant has been sued upon a finding that they bear additional responsibility for Plaintiff's damages.

6.

TEX. CIV. PRAC. & REM. CODE §90.006 (2005)

The citizens of the State of Texas and their state representatives believe that exposure to asbestos, particularly through inhalation of asbestos fibers, causes malignant and nonmalignant diseases, including mesothelioma and asbestosis. As such, it is the policy of the State of Texas to protect the right of people with impairing asbestos-related injuries to pursue their claims for

compensation in a fair and efficient manner through the Texas court system. Act of May 16, 2005, 79th Leg., R.S., ch. 97, § 1(n), 2005 Tex. Gen. Laws 169.

In keeping with the stated policy of the State of Texas, Plaintiff brings the following claims against Sempra Energy which is responsible for her husband's asbestos-related injuries and subsequent death. Accordingly, Plaintiff attaches to their original petition as Exhibit 1, Mr. Johnson's Tex. Civ. Prac. & Rem. Code 90.003 medical report as required by Tex. Civ. Prac. & Rem. Code 90.006.

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Plaintiff pleads and invokes the doctrine of strict liability against Ebasco because it was engaged in the sale of asbestos containing products. Plaintiff will show that the Defendant's products were defectively marketed and designed, that such defective conditions rendered their products unreasonably dangerous in the intended and reasonably anticipated use of their products, and that such defective conditions existed at the time they left Defendant's possession. Defendant knew or should have foreseen the risk of harm of their unreasonably dangerous products. Defendant's acts or omissions in these regards were producing causes of Plaintiff's injuries, damages, and/or death.

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undertakings which amount to negligence. Defendant knew, or in the exercise of ordinary care, should have known that the asbestos-containing products and/or machinery they sold, supplied, distributed, re-labeled, applied, installed, specified, bought, removed, manipulated, or otherwise exposed Mr. Johnson to was extremely dangerous and harmful to his health. As a proximate cause of such negligence, Plaintiff has suffered the injuries and damages complained of herein.

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DAMAGES

As a direct and proximate result of Ebasco's negligence, Mr. Johnson sustained a multitude of severe and deadly injuries. Upon trial of this case, Plaintiff respectfully requests the Court and Jury to determine the amount of loss Mr. Johnson has incurred. Mr. Johnson was damaged in the following particulars:

1. Prior to his death, Mr. Johnson suffered great physical pain and mental anguish;
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1. Witnessing the conscious physical pain and suffering sustained by Mr. Johnson prior to his death;
2. Witnessing the mental anguish sustained by Mr. Johnson prior to his death;
3. Witnessing the physical impairment suffered by Mr. Johnson prior to his death;
4. Witnessing the disfigurement suffered by Mr. Johnson prior to his death;
5. Reasonable funeral and burial expenses incurred by the Mrs. Johnson and the Jack

Johnson Estate;

6. The loss of household services, consortium, pecuniary loss, companionship and society that Mrs. Johnson received from Mr. Johnson prior to his last illnesses and death;

7. The mental anguish suffered by Mrs. Johnson as a consequence of the last illnesses and death of Mr. Johnson;

8. Punitive and exemplary damages as allowed by law to punish Sempra Energy for proximately causing Mr. Johnson's untimely death;

9. Prejudgment interest on all elements of damages as allowed by law; and

10. Loss of inheritance.

The actions and inactions of Sempra Energy, as specifically alleged herein above, whether taken separately or together, were of such a character as to constitute a pattern or practice of intentional wrongful conduct and/or malice resulting in the damages, diseases and death of Mr. Johnson. More specifically, Ebasco consciously and/or deliberately engaged in oppression, fraud, willfulness, wantonness and/or malice with regard to Mr. Johnson and should be held liable in punitive and exemplary damages to Plaintiff.

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in such an amount as to be found to be proper under the facts and circumstances.

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2. The mental anguish sustained by Mr. Johnson prior to his death;
3. The physical impairment suffered by Mr. Johnson prior to his death;

4. The disfigurement suffered by Mr. Johnson prior to his death;
5. Reasonable and necessary medical expenses incurred by Mr. Johnson prior to his death;
6. Reasonable funeral and burial expenses incurred by Plaintiff and the Estate of Jack W. Johnson;
7. Mr. Johnson's lost earning capacity;
8. The loss of household services, consortium, pecuniary loss, companionship and society that Plaintiff received from Mr. Johnson prior to his last illnesses and death;
9. The mental anguish suffered by Plaintiff as a consequence of the last illnesses and death of Mr. Johnson;
10. Punitive and exemplary damages as allowed by law to punish Sempra Energy for proximately causing Mr. Johnson's untimely death;
11. Prejudgment interest on all elements of damages as allowed by law; and,
12. Any other actual, compensatory, punitive and exemplary damages recoverable pursuant to the wrongful death and survival act as set out by Chapter 71 of the Texas Civil Practices and Remedy Code.

11.

JURY DEMAND

Plaintiff demands that all issues of fact in this case be tried to a Jury and has tendered the Jury fee herewith.

12.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the Defendant be cited to appear and answer herein, and that upon final trial, the Plaintiff have judgment against Defendant, and recover damages from the Defendant in an amount to be determined by a jury, plus costs of Court, interest as allowed by Texas law, and for such other and further relief, general and special, legal and equitable, to which this Plaintiff may show themselves to be justly entitled.

Respectfully submitted,

SHRADER & ASSOCIATES, LLP

By: 

Ross Stomel (TSB#24041979)
Robert E. Shuttlesworth (TSB#24033184)
3900 Essex Ln., Suite 390
Houston, TX 77027
Telephone: 713/782-0000
Facsimile: 713/571-9605
Email: ross@shraderlaw.com
Email: robert@shraderlaw.com



CHRIS DANIEL
HARRIS COUNTY DISTRICT CLERK

ENTERED _____
VERIFIED AK

Civil Process Pick-Up Form

CAUSE NUMBER: 201822086

ATY _____

CIV X

COURT 129

REQUESTING ATTORNEY/FIRM NOTIFICATION

ATTORNEY: Stomel, Ross D. PH: 713-782-0000

CIVIL PROCESS SERVER: Clear Legal 137

PH: 281-528-2071

PERSON NOTIFIED SVC READY: Camelia

DATE: 04-06-2018

Type of Service Document: Citation

Tracking Number 73480188

Type of Service Document: _____

Tracking Number _____

Type of Service Document: _____

Tracking Number _____

Type of Service Document: _____

Tracking Number _____

Type of Service Document: _____

Tracking Number _____

Type of Service Document: _____

Tracking Number _____

Type of Service Document: _____

Tracking Number _____

Process papers prepared by: Walter Eldridge

Date: 04 - 06 - 2018

30 days waiting 05 - 06 - 2018

Process papers released to: _____

Randy Venturella

(PRINT NAME)

832 8867 6006
(CONTACT NUMBER)

Riley

(SIGNATURE)

Process papers released by: _____

W. Chamber

(PRINT NAME)

W. Chamber

(SIGNATURE)

Date: 4-11

, 2018

Time: 12:56

AM (PM)

RECORDER'S MEMORANDUM
This instrument is of poor quality
at the time of imaging

EXHIBIT B4

CAUSE NO. 201822086

RECEIPT NO. 0.00 CIV

TR # 73480188

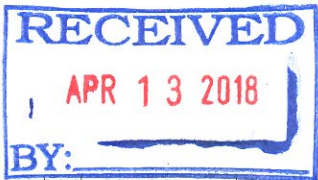
PLAINTIFF: JOHNSON, DIANE (INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF vs. DEFENDANT: SEMPRA ENERGY (SUCESSOR TO THE LIABILITY OF EBASCO SERVICES INC) In The 129th Judicial District Court of Harris County, Texas 129TH DISTRICT COURT Houston, TX

CITATION (SECRETARY OF STATE CORPORATE NON-RESIDENT)

THE STATE OF TEXAS
County of Harris

TO: SEMPRA ENERGY (SUCESSOR TO THE LIABILITY OF EBASCO SERVICES INC) (CORPORATION) WILL BE SERVED THROUGH THE SECRETARY OF STATE OF THE STATE OF TEXAS P O BOX 12079 AUSTIN TX 78711
FORWARD TO:
488 8TH AVENUE SAN DIEGO CA 92101

Attached is a copy of PLAINTIFF'S ORIGINAL PETITION



This instrument was filed on the 3rd day of April, 2018, in the above cited cause number and court. The instrument attached describes the claim against you.

YOU HAVE BEEN SUED, You may employ an attorney. If you or your attorney do not file a written answer with the District Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you.

TO OFFICER SERVING:

This citation was issued on 6th day of April, 2018, under my hand and seal of said Court.

Issued at request of:
STOMEL, ROSS DANIEL
3900 ESSEX LANE SUITE 390
HOUSTON, TX 77027
Tel: (713) 782-0000
Bar No.: 24041979



Chris Daniel
CHRIS DANIEL, District Clerk
Harris County, Texas
201 Caroline, Houston, Texas 77002
(P.O. Box 4651, Houston, Texas 77210)
GENERATED BY: ELDRIDGE, WALTER F J8P//10919309

OFFICER/AUTHORIZED PERSON RETURN

Received on the ____ day of _____, _____, at _____ o'clock ____ .M., and executed the same in _____ County, Texas, on the ____ day of _____, _____, at _____ o'clock ____ .M., by summoning the _____, _____ by delivering to _____, in person _____ a corporation < _____ by leaving in the principal office during office hours _____ of the said _____

a true copy of this notice, together with accompanying copy of

Serving _____ copy _____ \$ _____

**AFFIDAVIT
ATTACHED**

By _____
Affiant Deputy

On this day, _____, known to me to be the person whose signature appears on the foregoing return, personally appeared. After being by me duly sworn, he/she stated that this citation was executed by him/her in the exact manner recited on the return.

SWORN TO AND SUBSCRIBED BEFORE ME, on this ____ day of _____, _____.

Notary Public

RETURN OF SERVICE

Cause No. 201822086

In The 129th Judicial District Court of
Harris County, Texas

DIANE JOHNSON, INDIVIDUALLY AND
AS REPRESENTATIVE OF THE ESTATE
OF JACK W. JOHNSON, DECEASED
Plaintiff

V.

SEMPRA ENERGY, AS SUCCESSOR TO
THE LIABILITY OF EBASCO SERVICES, INC.
Defendant

Came to hand on April 16, 2018, at 04:50 PM.

Executed at 1019 Brazos St., 1st Floor, Austin, TX 78701, within the County of Travis at 12:59 PM on April 17, 2018, by delivering to the within named:

SEMPRA ENERGY (SUCCESSOR TO THE LIABILITY OF EBASCO SERVICES INC.),

by delivering to THE TEXAS SECRETARY OF STATE, by and through its designated agent, LIZ CORDELL, true duplicate copies of this Citation together with Plaintiff's Original Petition, having first endorsed upon both copies of such process the date of delivery, and tendering the \$55 Statutory Fee.

I certify that I am approved by the Supreme Court of Texas, Misc. Docket No. 05-9122 under rule 103, 501 and 501.2 of the TRCP to deliver citations and other notices from any District, County, and Justice Courts in and for the State of Texas. I am competent to make this oath; I am not less than 18 years of age, I am not a party to the above-referenced cause, I have not been convicted of a felony or a crime involving moral turpitude, and I am not interested in the outcome of the above-referenced cause.

By: _____

Jeff Keyton

PSC-735, Exp: 7/31/2020

VERIFICATION

STATE OF TEXAS §
COUNTY OF TRAVIS §

BEFORE ME, A NOTARY PUBLIC, on this day personally appeared Jeff Keyton, known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that the statements therein contained are true and correct.

Given under my hand and seal of office this April 17, 2018.

18-032170/103609



Helen Lupericio
NOTARY PUBLIC, STATE OF TEXAS

Cause No. 2018-22086

**DIANE JOHNSON, Individually and as
Representative of the Estate of JACK W.
JOHNSON, deceased,**

Plaintiff,

vs.

**EECI, INC., as successor to the liability
of Ebasco Services, Inc.,**

Defendant.

§ **IN THE DISTRICT COURT OF**
§
§
§
§
§
§ **HARRIS COUNTY, TEXAS**
§
§
§
§
§
§
§ **129th JUDICIAL DISTRICT**

PLAINTIFF'S FIRST AMENDED ORIGINAL PETITION

COMES NOW Plaintiff and complains of the Defendant listed herein and for causes of action would show the Court and the Jury as follows:

1.

DISCOVERY CONTROL PLAN

Pursuant to Texas Rule of Civil Procedure 190, Plaintiff respectfully requests that discovery in this case be conducted under a Level 3 Discovery Control Plan.

2.

PARTIES

Plaintiff is Diane Johnson, Individually and as Representative of the Estate of Jack W. Johnson, decedent. Diane Johnson is the surviving spouse of Jack W. Johnson. The last three digits of her social security number is 969. Diane Johnson is resident of Alabama.

Jack W. Johnson was employed from approximately 1954-2011 as an electrician working at numerous locations throughout the United States, including but not limited to Illinois, Virginia,

Louisiana, Texas, Pennsylvania, Mississippi, Nebraska, Oklahoma, Alabama, Oregon, Virginia, California, Colorado and Nebraska.

During the course of his employment at the locations mentioned above, the Mr. Johnson was exposed to and inhaled, ingested or otherwise absorbed large amounts of asbestos fibers emanating from certain products he was working with and around that were manufactured, sold, distributed or installed by **Defendant EECI, INC. EECI, INC. is successor to the liability of Ebasco Services, Inc. (“Ebasco”) and is a corporation organized and existing under and by virtue of the laws of the State of Nevada and doing business in the State of Texas, but has not designated a resident agent for service of process. This corporation can be served c/o CSC Services of Nevada, Inc., 2215-B Renaissance Dr., Las Vegas, NV 89119 pursuant to the Texas Long-Arm Statute, Tex. Civ. Prac. & Rem. Code §§ 17.041-.045. Defendant will be served through the Secretary of State for the State of Texas.**

3.

JURISDICTION

Jurisdiction is proper in this Court in that the amount in controversy exceeds the minimal jurisdictional limits of this Court, and the Defendant is subject to personal jurisdiction in the State of Texas. Moreover, the Defendant has conducted a substantial amount of business activity and has committed a tort, in whole or in part, in Texas. Every claim arising under the Constitution, treaties, or laws of the United States is expressly disclaimed, including any claim arising from an act or omission on a federal enclave, or of any officer of the U.S. or any agency or person acting under him occurring under color of such office. Plaintiff reserves the right to later amend the capacity in which any Defendant has been sued upon a finding that they bear additional responsibility for Plaintiff’s damages.

4.

VENUE

Venue of this action is proper as to the Plaintiff in Harris County, Texas under Tex. C.P.R.C. 15.002(a) because a substantial part of the events or omissions giving rise to the Plaintiff's claims occurred in Harris County. Specifically, Plaintiff is making a claim for Decedent's exposure to asbestos at a facilities located in Harris County.

5.

BACKGROUND

Jack Johnson had an extensive history of exposure to asbestos containing materials during his career as a journeyman electrician. Mr. Johnson started working in the electrical field in 1950 and was exposed to asbestos on a regular and frequent basis up through the early 1990s. These exposures led to his contraction of mesothelioma and his death on June 13, 2014.

Defendant named above bears responsibility in causing Plaintiff and Decedent's injuries in the individual capacities in which they have been sued. Plaintiff reserve the right to later amend the capacity in which any Defendant has been sued upon a finding that they bear additional responsibility for Plaintiff's damages.

6.

TEX. CIV. PRAC. & REM. CODE §90.006 (2005)

The citizens of the State of Texas and their state representatives believe that exposure to asbestos, particularly through inhalation of asbestos fibers, causes malignant and nonmalignant diseases, including mesothelioma and asbestosis. As such, it is the policy of the State of Texas to protect the right of people with impairing asbestos-related injuries to pursue their claims for compensation in a fair and efficient manner through the Texas court system. Act of May 16, 2005,

79th Leg., R.S., ch. 97, § 1(n), 2005 Tex. Gen. Laws 169.

In keeping with the stated policy of the State of Texas, Plaintiff brings the following claims against **EECI, Inc.**, which is responsible for her husband's asbestos-related injuries and subsequent death. Accordingly, Plaintiff attaches to their original petition as Exhibit 1, Mr. Johnson's Tex. Civ. Prac. & Rem. Code 90.003 medical report as required by Tex. Civ. Prac. & Rem. Code 90.006.

7.

STRICT LIABILITY

Plaintiff pleads and invokes the doctrine of strict liability against Ebasco because it was engaged in the sale of asbestos containing products. Plaintiff will show that the Defendant's products were defectively marketed and designed, that such defective conditions rendered their products unreasonably dangerous in the intended and reasonably anticipated use of their products, and that such defective conditions existed at the time they left Defendant's possession. Defendant knew or should have foreseen the risk of harm of their unreasonably dangerous products. Defendant's acts or omissions in these regards were producing causes of Plaintiff's injuries, damages, and/or death.

8.

NEGLIGENCE

Mr. Johnson was exposed to large quantities of asbestos and asbestos-containing products. The law imposed various duties on Defendant with respect to the safety and welfare of others such as Mr. Johnson. Defendant breached those duties by a multitude of acts, omissions, and/or undertakings which amount to negligence. Defendant knew, or in the exercise of ordinary care,

should have known that the asbestos-containing products and/or machinery they sold, supplied, distributed, re-labeled, applied, installed, specified, bought, removed, manipulated, or otherwise exposed Mr. Johnson to was extremely dangerous and harmful to his health. As a proximate cause of such negligence, Plaintiff has suffered the injuries and damages complained of herein.

Additionally, without waiving any specific acts of negligence as to Defendant, Plaintiff hereby gives notice of intent to rely on the doctrine of *res ipsa loquitur*, as Defendant's asbestos-containing products were under the exclusive management and control of Defendant, and given the character of Decedent's injuries and damages are such that they would ordinarily not have occurred in the absence of negligence.

Plaintiff would further show that Ebasco was one of the principal contractors that designed, built, and maintained the facilities that Mr. Johnson worked within. Ebasco was negligent in its sale, provision, installation, use, maintenance, distribution, repair, abatement, removal, and/or tear-out, of dangerous and deadly asbestos-containing products causing exposures to workers such as Mr. Johnson. The Defendant failed to warn of the hazards known to them or to prevent these exposures from occurring was a proximate cause of decedent's injuries and damages.

9.

DAMAGES

As a direct and proximate result of Ebasco's negligence, Mr. Johnson sustained a multitude of severe and deadly injuries. Upon trial of this case, Plaintiff respectfully requests the Court and Jury to determine the amount of loss Mr. Johnson has incurred. Mr. Johnson was damaged in the following particulars:

1. Prior to his death, Mr. Johnson suffered great physical pain and mental anguish;

2. Prior to his death, Mr. Johnson incurred hospital and/or medical and/or pharmaceutical and/or other expenses;

3. Prior to his death, Mr. Johnson suffered physical impairment;

4. Prior to his death, Mr. Johnson suffered permanent partial disability;

5. Prior to his death, Mr. Johnson required medical monitoring and required domestic help and nursing care due to his disabilities;

6. Prior to onset of his symptoms, Mr. Johnson was extremely active and participated in numerous hobbies and activities, and, as a result of his illnesses, he was prevented from engaging in all of said activities that were normal to him prior to developing symptoms from his disease; and,

7. Loss of earning capacity and lost wages.

As a direct and proximate result of Ebasco's negligence, Mr. Johnson's spouse sustained a multitude of injuries. Upon trial of this case, Plaintiff respectfully request the Court and Jury to determine the amount of loss Mr. Johnson's spouse has incurred. Mr. Johnson's spouse has been damaged in the following particulars:

1. Witnessing the conscious physical pain and suffering sustained by Mr. Johnson prior to his death;

2. Witnessing the mental anguish sustained by Mr. Johnson prior to his death;

3. Witnessing the physical impairment suffered by Mr. Johnson prior to his death;

4. Witnessing the disfigurement suffered by Mr. Johnson prior to his death;

5. Reasonable funeral and burial expenses incurred by the Mrs. Johnson and the Jack Johnson Estate;

6. The loss of household services, consortium, pecuniary loss, companionship and society that Mrs. Johnson received from Mr. Johnson prior to his last illnesses and death;

7. The mental anguish suffered by Mrs. Johnson as a consequence of the last illnesses and death of Mr. Johnson;

8. Punitive and exemplary damages as allowed by law to punish **EECI, Inc.** for proximately causing Mr. Johnson's untimely death;

9. Prejudgment interest on all elements of damages as allowed by law; and

10. Loss of inheritance.

The actions and inactions of **EECI, Inc.**, as specifically alleged herein above, whether taken separately or together, were of such a character as to constitute a pattern or practice of intentional wrongful conduct and/or malice resulting in the damages, diseases and death of Mr. Johnson. More specifically, Ebasco consciously and/or deliberately engaged in oppression, fraud, willfulness, wantonness and/or malice with regard to Mr. Johnson and should be held liable in punitive and exemplary damages to Plaintiff.

Additionally, the actions, omissions, and/or undertakings of Ebasco were of such a character as to make Ebasco guilty of malice. The conduct of Ebasco involved an extreme degree of risk, considering the probability and magnitude of potential harm to others. In addition, Ebasco had actual subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, and welfare of others. Further, notwithstanding the above, Ebasco's conduct is of such a nature that it violates Tex. Civ. Prac. & Rem. Code § 41.008(c)(4) and (7). Accordingly, as a result of the conduct of Ebasco, Plaintiff seeks exemplary damages in such an amount as to be found to be proper under the facts and circumstances.

Notwithstanding the above, when formulating the amount of exemplary damages, the jury should also consider:

1. the nature of Defendant's wrong;
2. the character of Defendant's conduct;
3. the degree of Defendant's culpability;
4. the situation and sensibilities of the Plaintiff and Mr. Johnson;
5. the extent to which Defendant's conduct offends a public sense of justice and propriety; and
6. the net worth of Defendant.

Additionally, Pursuant to Tex. R. Civ. P. 47, Plaintiffs seeks monetary relief of over \$1,000,000.00.

10.

WRONGFUL DEATH & SURVIVAL DAMAGES

Plaintiff is entitled to negligence, wrongful death, and survival damages. Further, heirs and wrongful death beneficiaries of Mr. Johnson will seek general and special damages including, but not limited to, damages for survival and wrongful death claims that they have sustained both in their individual capacity and as personal representatives of the Estate of Jack W. Johnson:

1. The conscious physical pain and suffering sustained by Mr. Johnson prior to his death;
2. The mental anguish sustained by Mr. Johnson prior to his death;
3. The physical impairment suffered by Mr. Johnson prior to his death;
4. The disfigurement suffered by Mr. Johnson prior to his death;

5. Reasonable and necessary medical expenses incurred by Mr. Johnson prior to his death;
6. Reasonable funeral and burial expenses incurred by Plaintiff and the Estate of Jack W. Johnson;
7. Mr. Johnson's lost earning capacity;
8. The loss of household services, consortium, pecuniary loss, companionship and society that Plaintiff received from Mr. Johnson prior to his last illnesses and death;
9. The mental anguish suffered by Plaintiff as a consequence of the last illnesses and death of Mr. Johnson;
10. Punitive and exemplary damages as allowed by law to punish **EECI, Inc.** for proximately causing Mr. Johnson's untimely death;
11. Prejudgment interest on all elements of damages as allowed by law; and,
12. Any other actual, compensatory, punitive and exemplary damages recoverable pursuant to the wrongful death and survival act as set out by Chapter 71 of the Texas Civil Practices and Remedy Code.

11.

JURY DEMAND

Plaintiff demands that all issues of fact in this case be tried to a Jury and has tendered the Jury fee herewith.

12.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the Defendant be cited to appear and answer herein, and that upon final trial, the Plaintiff have judgment against Defendant, and recover damages from the Defendant in an amount to be determined by a jury, plus costs of Court, interest as allowed by Texas law, and for such other and further relief, general and special, legal and equitable, to which this Plaintiff may show themselves to be justly entitled.

Respectfully submitted,

SHRADER & ASSOCIATES, LLP

By: /s/ Ross D. Stomel
Ross Stomel (TSB#24041979)
Robert E. Shuttlesworth (TSB#24033184)
3900 Essex Ln., Suite 390
Houston, TX 77027
Telephone: 713/782-0000
Facsimile: 713/571-9605
Email: robert@shraderlaw.com

Certificate of Service

I hereby certify that a true and correct copy of the above was forwarded to and served upon all counsel of record on this the 7th day of June, 2018 in accordance with the Texas Rules of Civil Procedure.

/s/ Ross D. Stomel
Ross D. Stomel

CIVIL PROCESS REQUEST

6/7/2018 12:23:42 PM
Chris Daniel - District Clerk
Harris County
Envelope No: 25128059
By: BLESSING, JACOB K
Filed: 6/7/2018 12:23:42 PM

FOR EACH PARTY SERVED YOU MUST FURNISH ONE (1) COPY OF THE PLEADING
FOR WRITS FURNISH TWO (2) COPIES OF THE PLEADING PER PARTY TO BE SERVED

CASE NUMBER: 2018-22086 CURRENT COURT: 129th

TYPE OF INSTRUMENT TO BE SERVED (See Reverse For Types): First Amended Petition

FILE DATE OF MOTION: 06 07 2018
Month/ Day/ Year

SERVICE TO BE ISSUED ON (Please List Exactly As The Name Appears In The Pleading To Be Served):

1. NAME: EECI, Inc.

ADDRESS: 2215-B Renaissance Dr., Las Vegas, NV 89119

AGENT, (if applicable): CSC Services of Nevada, Inc.

TYPE OF SERVICE/PROCESS TO BE ISSUED (see reverse for specific type): Citation

SERVICE BY (check one):

- ☐ ATTORNEY PICK-UP ☐ CONSTABLE
☒ CIVIL PROCESS SERVER - Authorized Person to Pick-up: Clear Legal Phone: 281-528-2071
☐ MAIL ☐ CERTIFIED MAIL
☐ PUBLICATION:
Type of Publication: ☐ COURTHOUSE DOOR, or
☐ NEWSPAPER OF YOUR CHOICE: _____
☐ OTHER, explain _____

2. NAME: _____

ADDRESS: _____

AGENT, (if applicable): _____

TYPE OF SERVICE/PROCESS TO BE ISSUED (see reverse for specific type): _____

SERVICE BY (check one):

- ☐ ATTORNEY PICK-UP ☐ CONSTABLE
☐ CIVIL PROCESS SERVER - Authorized Person to Pick-up: _____ Phone: _____
☐ MAIL ☐ CERTIFIED MAIL
☐ PUBLICATION:
Type of Publication: ☐ COURTHOUSE DOOR, or
☐ NEWSPAPER OF YOUR CHOICE: _____
☐ OTHER, explain _____

ATTORNEY (OR ATTORNEY'S AGENT) REQUESTING SERVICE:

NAME: Ross D. Stomel TEXAS BAR NO./ID NO. 24041979

MAILING ADDRESS: 3900 Essex Lane, Suite 390, Houston, TX 77027

PHONE NUMBER: 713 782-0000 FAX NUMBER: 713 571-9605
area code phone number area code fax number

EMAIL ADDRESS: ross@shraderlaw.com

CW



CHRIS DANIEL
HARRIS COUNTY DISTRICT CLERK

Civil Process Pick-Up Form

CAUSE NUMBER: 2018-22086

ATY _____

CIV 6

COURT 129

REQUESTING ATTORNEY/FIRM NOTIFICATION	
*ATTORNEY: <u>Hon. J. Ross</u>	*PH: <u>713-82-0000</u>
*CIVIL PROCESS SERVER: <u>Clear Legal</u>	
*PH: <u>281-5282071</u>	
*PERSON NOTIFIED SVC READY: _____	
*NOTIFIED BY: <u>WC</u>	
*DATE: <u>6-13-18</u>	

Type of Service Document: See attached
Type of Service Document: _____
Type of Service Document: _____
Type of Service Document: _____
Type of Service Document: _____
Type of Service Document: _____
Type of Service Document: _____

Tracking Number 73505546
Tracking Number _____
Tracking Number _____
Tracking Number _____
Tracking Number _____
Tracking Number _____
Tracking Number _____

Process papers prepared by: **WANDA CHAMBERS**

Date: 6 / 13 / 2018

30 days waiting 7 / 13 / 2018

*Process papers released to:	<u>Randy Ventunello</u> (PRINT NAME)
<u>832 867 6006</u> *(CONTACT NUMBER)	<u>Carla Carrillo</u> (SIGNATURE)
*Process papers released by:	CARLA CARRILLO (PRINT NAME)
	<u>[Signature]</u> (SIGNATURE)
* Date: <u>6/15</u> , 2018	Time: <u>4:00</u> AM / PM <u>PM</u>

EXHIBIT B8

RECORDER'S MEMORANDUM
This instrument is of poor quality
at the time of imaging

SHRADER & ASSOCIATES, L.L.P.

ATTORNEYS AT LAW

6/13/2018 10:08 AM
Chris Daniel - District Clerk Harris County
Envelope No. 25253149
By: Jacob Blessing
Filed: 6/13/2018 10:08 AM

JUSTIN H. SHRADER⁺
WILLIAM C. SHRADER⁺
ROSS D. STOMEL⁺#
MATTHEW B. MCLEOD⁺

3900 ESSEX LANE
SUITE 390
HOUSTON, TEXAS 77027

TEXAS: 713-782-0000
ILLINOIS: 618-659-0001
FACSIMILE: 713-571-9605
TOLL-FREE: 1-866-262-8170

THOMAS H. HART, III ✕[~]
OF COUNSEL

22A GINGER CREEK PARKWAY
GLEN CARBON, ILLINOIS 62034

EUGENE R. EGDORF⁺
SENIOR COUNSEL

ROBERT E. SHUTTLESWORTH⁺
ALLYSON M. ROMANI*
JORDAN C. ROBERTS⁺
VANESSA DENNIS~
BRADLEY D. PEEK⁺
WILLIAM B. ALLEN⁺
A. LAYNE STACKHOUSE[°]
LUKE A. KEOGH⁺
JAMES B. HARTLE⁺

⁺ ADMITTED IN TEXAS
^{*} ADMITTED IN ILLINOIS
[~] ADMITTED IN MASSACHUSETTS
⁻ ADMITTED IN RHODE ISLAND
[#] ADMITTED IN MISSOURI
[°] ADMITTED IN KENTUCKY
[✕] ADMITTED IN SOUTH CAROLINA
[◇] ADMITTED IN VIRGIN ISLANDS
[≈] ADMITTED IN WASHINGTON STATE

June 13, 2018

Harris County District Clerk
ATTN: REGINA
Civil Courthouse
201 Caroline
Houston, TX 77002
Via ProDoc eFiling 2

***Re: Diane Johnson, Individually and as Representative of the Estate of Jack W. Johnson,
deceased vs. Sempra Energy – Cause No. 2018-22086***

Dear Clerk:

I am writing to correct my error regarding the civil process fee in this case. I should have indicated the citation was to be served via the Secretary of State and paid the corresponding \$12 fee. Instead, I only paid an \$8.00 fee, shortchanging the total by \$4.00. Please let this serve as my correspondence to correct me error and pay the additional fee for service by Secretary of State.

Thank you for calling to advise us how to correct this issue.

Very truly yours,

/s/ Jolyn Tarr

Jolyn Tarr
Case Management Paralegal

JTT:id

EXHIBIT B9

Cause No. _____

<p>DIANE JOHNSON, Individually and as Representative of the Estate of JACK W. JOHNSON, deceased,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">-</p> <p>vs.</p> <p>SEMPRA ENERGY, as successor to the liability of Ebasco Services, Inc.,</p> <p style="text-align: center;">Defendant.</p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p>IN THE DISTRICT COURT OF</p> <p>HARRIS COUNTY, TEXAS</p> <p>____ JUDICIAL DISTRICT</p>
--	---	--

PLAINTIFF'S ORIGINAL PETITION

COMES NOW Plaintiff and complains of the Defendant listed herein and for causes of action would show the Court and the Jury as follows:

1.

DISCOVERY CONTROL PLAN

Pursuant to Texas Rule of Civil Procedure 190, Plaintiff respectfully requests that discovery in this case be conducted under a Level 3 Discovery Control Plan.

2.

PARTIES

Plaintiff is **Diane Johnson, Individually and as Representative of the Estate of Jack W. Johnson, decedent.** Diane Johnson is the surviving spouse of Jack W. Johnson. The last three digits of her social security number is 969. Diane Johnson is resident of Alabama.

Jack W. Johnson was employed from approximately 1954-2011 as an electrician working at numerous locations throughout the United States, including but not limited to Illinois, Virginia,

Louisiana, Texas, Pennsylvania, Mississippi, Nebraska, Oklahoma, Alabama, Oregon, Virginia, California, Colorado and Nebraska.

During the course of his employment at the locations mentioned above, the Mr. Johnson was exposed to and inhaled, ingested or otherwise absorbed large amounts of asbestos fibers emanating from certain products he was working with and around that were manufactured, sold, distributed or installed by **Defendant SEMPRA ENERGY**. Sempra Energy is successor to the liability of Ebasco Services, Inc. ("Ebasco") and is a corporation organized and existing under and by virtue of the laws of the State of California. Its address is 488 8th Avenue, San Diego, California, 92101 and will be served through the Secretary of State of the State of Texas.

3.

JURISDICTION

Jurisdiction is proper in this Court in that the amount in controversy exceeds the minimal jurisdictional limits of this Court, and the Defendant is subject to personal jurisdiction in the State of Texas. Moreover, the Defendant has conducted a substantial amount of business activity and has committed a tort, in whole or in part, in Texas. Every claim arising under the Constitution, treaties, or laws of the United States is expressly disclaimed, including any claim arising from an act or omission on a federal enclave, or of any officer of the U.S. or any agency or person acting under him occurring under color of such office. Plaintiff reserves the right to later amend the capacity in which any Defendant has been sued upon a finding that they bear additional responsibility for Plaintiff's damages.

4.

VENUE

Venue of this action is proper as to the Plaintiff in Harris County, Texas under Tex.

C.P.R.C. 15.002(a) because a substantial part of the events or omissions giving rise to the Plaintiff's claims occurred in Harris County. Specifically, Plaintiff is making a claim for Decedent's exposure to asbestos at a facilities located in Harris County.

5.

BACKGROUND

Jack Johnson had an extensive history of exposure to asbestos containing materials during his career as a journeyman electrician. Mr. Johnson started working in the electrical field in 1950 and was exposed to asbestos on a regular and frequent basis up through the early 1990s. These exposures led to his contraction of mesothelioma and his death on June 13, 2014.

On February 26, 2018, Defendant Sempra Energy announced that the U.S. Bankruptcy Court for the District of Delaware confirmed the plan of reorganization for Energy Future Holdings Corp. (Ebasco) and provided its final approval for Sempra Energy's agreement to acquire EFH's assets and liabilities. Jack and Diane Johnson filed a proof of claim in the bankruptcy and are now entitled to bring suit directly against Sempra Energy's for Ebasco's responsibility in causing Plaintiff and Decedent's injuries in the individual capacities in which they have been sued. Plaintiff reserve the right to later amend the capacity in which any Defendant has been sued upon a finding that they bear additional responsibility for Plaintiff's damages.

6.

TEX. CIV. PRAC. & REM. CODE §90.006 (2005)

The citizens of the State of Texas and their state representatives believe that exposure to asbestos, particularly through inhalation of asbestos fibers, causes malignant and nonmalignant diseases, including mesothelioma and asbestosis. As such, it is the policy of the State of Texas to protect the right of people with impairing asbestos-related injuries to pursue their claims for

compensation in a fair and efficient manner through the Texas court system. Act of May 16, 2005, 79th Leg., R.S., ch. 97, § 1(n), 2005 Tex. Gen. Laws 169.

In keeping with the stated policy of the State of Texas, Plaintiff brings the following claims against Sempra Energy which is responsible for her husband's asbestos-related injuries and subsequent death. Accordingly, Plaintiff attaches to their original petition as Exhibit 1, Mr. Johnson's Tex. Civ. Prac. & Rem. Code 90.003 medical report as required by Tex. Civ. Prac. & Rem. Code 90.006.

7.

STRICT LIABILITY

Plaintiff pleads and invokes the doctrine of strict liability against Ebasco because it was engaged in the sale of asbestos containing products. Plaintiff will show that the Defendant's products were defectively marketed and designed, that such defective conditions rendered their products unreasonably dangerous in the intended and reasonably anticipated use of their products, and that such defective conditions existed at the time they left Defendant's possession. Defendant knew or should have foreseen the risk of harm of their unreasonably dangerous products. Defendant's acts or omissions in these regards were producing causes of Plaintiff's injuries, damages, and/or death.

8.

NEGLIGENCE

Mr. Johnson was exposed to large quantities of asbestos and asbestos-containing products. The law imposed various duties on Defendant with respect to the safety and welfare of others such as Mr. Johnson. Defendant breached those duties by a multitude of acts, omissions, and/or

undertakings which amount to negligence. Defendant knew, or in the exercise of ordinary care, should have known that the asbestos-containing products and/or machinery they sold, supplied, distributed, re-labeled, applied, installed, specified, bought, removed, manipulated, or otherwise exposed Mr. Johnson to was extremely dangerous and harmful to his health. As a proximate cause of such negligence, Plaintiff has suffered the injuries and damages complained of herein.

Additionally, without waiving any specific acts of negligence as to Defendant, Plaintiff hereby gives notice of intent to rely on the doctrine of *res ipsa loquitur*, as Defendant's asbestos-containing products were under the exclusive management and control of Defendant, and given the character of Decedent's injuries and damages are such that they would ordinarily not have occurred in the absence of negligence.

Plaintiff would further show that Ebasco was one of the principal contractors that designed, built, and maintained the facilities that Mr. Johnson worked within. Ebasco was negligent in its sale, provision, installation, use, maintenance, distribution, repair, abatement, removal, and/or tear-out, of dangerous and deadly asbestos-containing products causing exposures to workers such as Mr. Johnson. The Defendant failed to warn of the hazards known to them or to prevent these exposures from occurring was a proximate cause of decedent's injuries and damages.

9.

DAMAGES

As a direct and proximate result of Ebasco's negligence, Mr. Johnson sustained a multitude of severe and deadly injuries. Upon trial of this case, Plaintiff respectfully requests the Court and Jury to determine the amount of loss Mr. Johnson has incurred. Mr. Johnson was damaged in the following particulars:

1. Prior to his death, Mr. Johnson suffered great physical pain and mental anguish;
2. Prior to his death, Mr. Johnson incurred hospital and/or medical and/or pharmaceutical and/or other expenses;
3. Prior to his death, Mr. Johnson suffered physical impairment;
4. Prior to his death, Mr. Johnson suffered permanent partial disability;
5. Prior to his death, Mr. Johnson required medical monitoring and required domestic help and nursing care due to his disabilities;
6. Prior to onset of his symptoms, Mr. Johnson was extremely active and participated in numerous hobbies and activities, and, as a result of his illnesses, he was prevented from engaging in all of said activities that were normal to him prior to developing symptoms from his disease; and,
7. Loss of earning capacity and lost wages.

As a direct and proximate result of Ebasco's negligence, Mr. Johnson's spouse sustained a multitude of injuries. Upon trial of this case, Plaintiff respectfully request the Court and Jury to determine the amount of loss Mr. Johnson's spouse has incurred. Mr. Johnson's spouse has been damaged in the following particulars:

1. Witnessing the conscious physical pain and suffering sustained by Mr. Johnson prior to his death;
2. Witnessing the mental anguish sustained by Mr. Johnson prior to his death;
3. Witnessing the physical impairment suffered by Mr. Johnson prior to his death;
4. Witnessing the disfigurement suffered by Mr. Johnson prior to his death;
5. Reasonable funeral and burial expenses incurred by the Mrs. Johnson and the Jack

Johnson Estate;

6. The loss of household services, consortium, pecuniary loss, companionship and society that Mrs. Johnson received from Mr. Johnson prior to his last illnesses and death;

7. The mental anguish suffered by Mrs. Johnson as a consequence of the last illnesses and death of Mr. Johnson;

8. Punitive and exemplary damages as allowed by law to punish Sempra Energy for proximately causing Mr. Johnson's untimely death;

9. Prejudgment interest on all elements of damages as allowed by law; and

10. Loss of inheritance.

The actions and inactions of Sempra Energy, as specifically alleged herein above, whether taken separately or together, were of such a character as to constitute a pattern or practice of intentional wrongful conduct and/or malice resulting in the damages, diseases and death of Mr. Johnson. More specifically, Ebasco consciously and/or deliberately engaged in oppression, fraud, willfulness, wantonness and/or malice with regard to Mr. Johnson and should be held liable in punitive and exemplary damages to Plaintiff.

Additionally, the actions, omissions, and/or undertakings of Ebasco were of such a character as to make Ebasco guilty of malice. The conduct of Ebasco involved an extreme degree of risk, considering the probability and magnitude of potential harm to others. In addition, Ebasco had actual subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, and welfare of others. Further, notwithstanding the above, Ebasco's conduct is of such a nature that it violates Tex. Civ. Prac. & Rem. Code § 41.008(c)(4) and (7). Accordingly, as a result of the conduct of Ebasco, Plaintiff seeks exemplary damages

in such an amount as to be found to be proper under the facts and circumstances.

Notwithstanding the above, when formulating the amount of exemplary damages, the jury should also consider:

1. the nature of Defendant's wrong;
2. the character of Defendant's conduct;
3. the degree of Defendant's culpability;
4. the situation and sensibilities of the Plaintiff and Mr. Johnson;
5. the extent to which Defendant's conduct offends a public sense of justice and propriety; and
6. the net worth of Defendant.

Additionally, Pursuant to Tex. R. Civ. P. 47, Plaintiffs seeks monetary relief of over \$1,000,000.00.

10.

WRONGFUL DEATH & SURVIVAL DAMAGES

Plaintiff is entitled to negligence, wrongful death, and survival damages. Further, heirs and wrongful death beneficiaries of Mr. Johnson will seek general and special damages including, but not limited to, damages for survival and wrongful death claims that they have sustained both in their individual capacity and as personal representatives of the Estate of Jack W. Johnson:

1. The conscious physical pain and suffering sustained by Mr. Johnson prior to his death;
2. The mental anguish sustained by Mr. Johnson prior to his death;
3. The physical impairment suffered by Mr. Johnson prior to his death;

4. The disfigurement suffered by Mr. Johnson prior to his death;
5. Reasonable and necessary medical expenses incurred by Mr. Johnson prior to his death;
6. Reasonable funeral and burial expenses incurred by Plaintiff and the Estate of Jack W. Johnson;
7. Mr. Johnson's lost earning capacity;
8. The loss of household services, consortium, pecuniary loss, companionship and society that Plaintiff received from Mr. Johnson prior to his last illnesses and death;
9. The mental anguish suffered by Plaintiff as a consequence of the last illnesses and death of Mr. Johnson;
10. Punitive and exemplary damages as allowed by law to punish Sempra Energy for proximately causing Mr. Johnson's untimely death;
11. Prejudgment interest on all elements of damages as allowed by law; and,
12. Any other actual, compensatory, punitive and exemplary damages recoverable pursuant to the wrongful death and survival act as set out by Chapter 71 of the Texas Civil Practices and Remedy Code.

11.

JURY DEMAND

Plaintiff demands that all issues of fact in this case be tried to a Jury and has tendered the Jury fee herewith.

12.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the Defendant be cited to appear and answer herein, and that upon final trial, the Plaintiff have judgment against Defendant, and recover damages from the Defendant in an amount to be determined by a jury, plus costs of Court, interest as allowed by Texas law, and for such other and further relief, general and special, legal and equitable, to which this Plaintiff may show themselves to be justly entitled.

Respectfully submitted,

SHRADER & ASSOCIATES, LLP

By: 

Ross Stomel (TSB#24041979)
Robert E. Shuttlesworth (TSB#24033184)
3900 Essex Ln., Suite 390
Houston, TX 77027
Telephone: 713/782-0000
Facsimile: 713/571-9605
Email: ross@shraderlaw.com
Email: robert@shraderlaw.com

Cause No. 2018-22086

**DIANE JOHNSON, Individually and as
Representative of the Estate of JACK W.
JOHNSON, deceased,**

Plaintiff,

vs.

**EECI, INC., as successor to the liability
of Ebasco Services, Inc.,**

Defendant.

§ **IN THE DISTRICT COURT OF**
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§ **HARRIS COUNTY, TEXAS**
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§ **129th JUDICIAL DISTRICT**

PLAINTIFF'S FIRST AMENDED ORIGINAL PETITION

COMES NOW Plaintiff and complains of the Defendant listed herein and for causes of action would show the Court and the Jury as follows:

1.

DISCOVERY CONTROL PLAN

Pursuant to Texas Rule of Civil Procedure 190, Plaintiff respectfully requests that discovery in this case be conducted under a Level 3 Discovery Control Plan.

2.

PARTIES

Plaintiff is Diane Johnson, Individually and as Representative of the Estate of Jack W. Johnson, decedent. Diane Johnson is the surviving spouse of Jack W. Johnson. The last three digits of her social security number is 969. Diane Johnson is resident of Alabama.

Jack W. Johnson was employed from approximately 1954-2011 as an electrician working at numerous locations throughout the United States, including but not limited to Illinois, Virginia,

Louisiana, Texas, Pennsylvania, Mississippi, Nebraska, Oklahoma, Alabama, Oregon, Virginia, California, Colorado and Nebraska.

During the course of his employment at the locations mentioned above, the Mr. Johnson was exposed to and inhaled, ingested or otherwise absorbed large amounts of asbestos fibers emanating from certain products he was working with and around that were manufactured, sold, distributed or installed by **Defendant EECI, INC.** **EECI, INC. is successor to the liability of Ebasco Services, Inc. (“Ebasco”) and is a corporation organized and existing under and by virtue of the laws of the State of Nevada and doing business in the State of Texas, but has not designated a resident agent for service of process. This corporation can be served c/o CSC Services of Nevada, Inc., 2215-B Renaissance Dr., Las Vegas, NV 89119 pursuant to the Texas Long-Arm Statute, Tex. Civ. Prac. & Rem. Code §§ 17.041-.045. Defendant will be served through the Secretary of State for the State of Texas.**

3.

JURISDICTION

Jurisdiction is proper in this Court in that the amount in controversy exceeds the minimal jurisdictional limits of this Court, and the Defendant is subject to personal jurisdiction in the State of Texas. Moreover, the Defendant has conducted a substantial amount of business activity and has committed a tort, in whole or in part, in Texas. Every claim arising under the Constitution, treaties, or laws of the United States is expressly disclaimed, including any claim arising from an act or omission on a federal enclave, or of any officer of the U.S. or any agency or person acting under him occurring under color of such office. Plaintiff reserves the right to later amend the capacity in which any Defendant has been sued upon a finding that they bear additional responsibility for Plaintiff’s damages.

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Venue of this action is proper as to the Plaintiff in Harris County, Texas under Tex. C.P.R.C. 15.002(a) because a substantial part of the events or omissions giving rise to the Plaintiff's claims occurred in Harris County. Specifically, Plaintiff is making a claim for Decedent's exposure to asbestos at a facilities located in Harris County.

5.

BACKGROUND

Jack Johnson had an extensive history of exposure to asbestos containing materials during his career as a journeyman electrician. Mr. Johnson started working in the electrical field in 1950 and was exposed to asbestos on a regular and frequent basis up through the early 1990s. These exposures led to his contraction of mesothelioma and his death on June 13, 2014.

Defendant named above bears responsibility in causing Plaintiff and Decedent's injuries in the individual capacities in which they have been sued. Plaintiff reserve the right to later amend the capacity in which any Defendant has been sued upon a finding that they bear additional responsibility for Plaintiff's damages.

6.

TEX. CIV. PRAC. & REM. CODE §90.006 (2005)

The citizens of the State of Texas and their state representatives believe that exposure to asbestos, particularly through inhalation of asbestos fibers, causes malignant and nonmalignant diseases, including mesothelioma and asbestosis. As such, it is the policy of the State of Texas to protect the right of people with impairing asbestos-related injuries to pursue their claims for compensation in a fair and efficient manner through the Texas court system. Act of May 16, 2005,

79th Leg., R.S., ch. 97, § 1(n), 2005 Tex. Gen. Laws 169.

In keeping with the stated policy of the State of Texas, Plaintiff brings the following claims against **EECI, Inc.**, which is responsible for her husband's asbestos-related injuries and subsequent death. Accordingly, Plaintiff attaches to their original petition as Exhibit 1, Mr. Johnson's Tex. Civ. Prac. & Rem. Code 90.003 medical report as required by Tex. Civ. Prac. & Rem. Code 90.006.

7.

STRICT LIABILITY

Plaintiff pleads and invokes the doctrine of strict liability against Ebasco because it was engaged in the sale of asbestos containing products. Plaintiff will show that the Defendant's products were defectively marketed and designed, that such defective conditions rendered their products unreasonably dangerous in the intended and reasonably anticipated use of their products, and that such defective conditions existed at the time they left Defendant's possession. Defendant knew or should have foreseen the risk of harm of their unreasonably dangerous products. Defendant's acts or omissions in these regards were producing causes of Plaintiff's injuries, damages, and/or death.

8.

NEGLIGENCE

Mr. Johnson was exposed to large quantities of asbestos and asbestos-containing products. The law imposed various duties on Defendant with respect to the safety and welfare of others such as Mr. Johnson. Defendant breached those duties by a multitude of acts, omissions, and/or undertakings which amount to negligence. Defendant knew, or in the exercise of ordinary care,

should have known that the asbestos-containing products and/or machinery they sold, supplied, distributed, re-labeled, applied, installed, specified, bought, removed, manipulated, or otherwise exposed Mr. Johnson to was extremely dangerous and harmful to his health. As a proximate cause of such negligence, Plaintiff has suffered the injuries and damages complained of herein.

Additionally, without waiving any specific acts of negligence as to Defendant, Plaintiff hereby gives notice of intent to rely on the doctrine of *res ipsa loquitur*, as Defendant's asbestos-containing products were under the exclusive management and control of Defendant, and given the character of Decedent's injuries and damages are such that they would ordinarily not have occurred in the absence of negligence.

Plaintiff would further show that Ebasco was one of the principal contractors that designed, built, and maintained the facilities that Mr. Johnson worked within. Ebasco was negligent in its sale, provision, installation, use, maintenance, distribution, repair, abatement, removal, and/or tear-out, of dangerous and deadly asbestos-containing products causing exposures to workers such as Mr. Johnson. The Defendant failed to warn of the hazards known to them or to prevent these exposures from occurring was a proximate cause of decedent's injuries and damages.

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As a direct and proximate result of Ebasco's negligence, Mr. Johnson's spouse sustained a multitude of injuries. Upon trial of this case, Plaintiff respectfully request the Court and Jury to determine the amount of loss Mr. Johnson's spouse has incurred. Mr. Johnson's spouse has been damaged in the following particulars:

1. Witnessing the conscious physical pain and suffering sustained by Mr. Johnson prior to his death;

2. Witnessing the mental anguish sustained by Mr. Johnson prior to his death;

3. Witnessing the physical impairment suffered by Mr. Johnson prior to his death;

4. Witnessing the disfigurement suffered by Mr. Johnson prior to his death;

5. Reasonable funeral and burial expenses incurred by the Mrs. Johnson and the Jack Johnson Estate;

6. The loss of household services, consortium, pecuniary loss, companionship and society that Mrs. Johnson received from Mr. Johnson prior to his last illnesses and death;

7. The mental anguish suffered by Mrs. Johnson as a consequence of the last illnesses and death of Mr. Johnson;

8. Punitive and exemplary damages as allowed by law to punish **EECI, Inc.** for proximately causing Mr. Johnson's untimely death;

9. Prejudgment interest on all elements of damages as allowed by law; and

10. Loss of inheritance.

The actions and inactions of **EECI, Inc.**, as specifically alleged herein above, whether taken separately or together, were of such a character as to constitute a pattern or practice of intentional wrongful conduct and/or malice resulting in the damages, diseases and death of Mr. Johnson. More specifically, Ebasco consciously and/or deliberately engaged in oppression, fraud, willfulness, wantonness and/or malice with regard to Mr. Johnson and should be held liable in punitive and exemplary damages to Plaintiff.

Additionally, the actions, omissions, and/or undertakings of Ebasco were of such a character as to make Ebasco guilty of malice. The conduct of Ebasco involved an extreme degree of risk, considering the probability and magnitude of potential harm to others. In addition, Ebasco had actual subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, and welfare of others. Further, notwithstanding the above, Ebasco's conduct is of such a nature that it violates Tex. Civ. Prac. & Rem. Code § 41.008(c)(4) and (7). Accordingly, as a result of the conduct of Ebasco, Plaintiff seeks exemplary damages in such an amount as to be found to be proper under the facts and circumstances.

Notwithstanding the above, when formulating the amount of exemplary damages, the jury should also consider:

1. the nature of Defendant's wrong;
2. the character of Defendant's conduct;
3. the degree of Defendant's culpability;
4. the situation and sensibilities of the Plaintiff and Mr. Johnson;
5. the extent to which Defendant's conduct offends a public sense of justice and propriety; and
6. the net worth of Defendant.

Additionally, Pursuant to Tex. R. Civ. P. 47, Plaintiffs seeks monetary relief of over \$1,000,000.00.

10.

WRONGFUL DEATH & SURVIVAL DAMAGES

Plaintiff is entitled to negligence, wrongful death, and survival damages. Further, heirs and wrongful death beneficiaries of Mr. Johnson will seek general and special damages including, but not limited to, damages for survival and wrongful death claims that they have sustained both in their individual capacity and as personal representatives of the Estate of Jack W. Johnson:

1. The conscious physical pain and suffering sustained by Mr. Johnson prior to his death;
2. The mental anguish sustained by Mr. Johnson prior to his death;
3. The physical impairment suffered by Mr. Johnson prior to his death;
4. The disfigurement suffered by Mr. Johnson prior to his death;

5. Reasonable and necessary medical expenses incurred by Mr. Johnson prior to his death;
6. Reasonable funeral and burial expenses incurred by Plaintiff and the Estate of Jack W. Johnson;
7. Mr. Johnson's lost earning capacity;
8. The loss of household services, consortium, pecuniary loss, companionship and society that Plaintiff received from Mr. Johnson prior to his last illnesses and death;
9. The mental anguish suffered by Plaintiff as a consequence of the last illnesses and death of Mr. Johnson;
10. Punitive and exemplary damages as allowed by law to punish **EECI, Inc.** for proximately causing Mr. Johnson's untimely death;
11. Prejudgment interest on all elements of damages as allowed by law; and,
12. Any other actual, compensatory, punitive and exemplary damages recoverable pursuant to the wrongful death and survival act as set out by Chapter 71 of the Texas Civil Practices and Remedy Code.

11.

JURY DEMAND

Plaintiff demands that all issues of fact in this case be tried to a Jury and has tendered the Jury fee herewith.

12.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the Defendant be cited to appear and answer herein, and that upon final trial, the Plaintiff have judgment against Defendant, and recover damages from the Defendant in an amount to be determined by a jury, plus costs of Court, interest as allowed by Texas law, and for such other and further relief, general and special, legal and equitable, to which this Plaintiff may show themselves to be justly entitled.

Respectfully submitted,

SHRADER & ASSOCIATES, LLP

By: /s/ Ross D. Stomel
Ross Stomel (TSB#24041979)
Robert E. Shuttlesworth (TSB#24033184)
3900 Essex Ln., Suite 390
Houston, TX 77027
Telephone: 713/782-0000
Facsimile: 713/571-9605
Email: robert@shraderlaw.com

Certificate of Service

I hereby certify that a true and correct copy of the above was forwarded to and served upon all counsel of record on this the 7th day of June, 2018 in accordance with the Texas Rules of Civil Procedure.

/s/ Ross D. Stomel
Ross D. Stomel

2018-22086

COURT: 129th

FILED DATE: 4/3/2018

CASE TYPE: Product Liability - Asbestos/Silica



**JOHNSON, DIANE (INDIVIDUALLY AND AS
REPRESENTATIVE OF THE ESTATE OF**

Attorney: STOMEL, ROSS DANIEL

VS.

**SEMPRA ENERGY (SUCCESSOR TO THE LIABILITY OF
EBASCO SERVICES INC)**

Docket Sheet Entries

Date

Comment

EXHIBIT D

EXHIBIT “E”

CAUSE NO. 2018-22086

**DIANE JOHNSON, Individually and
as Representative of the Estate of
JACK W. JOHNSON, Deceased,**

Plaintiff,

v.

**EECI, Inc., as successor to the liability
of Ebasco Services, Inc.,**

Defendant.

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IN THE DISTRICT COURT

HARRIS COUNTY, TEXAS

129TH JUDICIAL DISTRICT

INDEX OF DOCUMENTS

No.	Title	Date Filed
1.	Civil Process Request	04/03/2018
2.	Civil Case Information Sheet	04/03/2018
3.	Plaintiff’s Original Petition	04/03/2018
4.	Civil Process Pick-Up Form	04/06/2018
5.	Citation and Return of Service	04/25/2018
6.	Plaintiff’s First Amended Original Petition	06/07/2018
7.	Civil Process Request Form	06/07/2018
8.	Civil Process Pick-Up Form	06/13/2018
9.	Letter Regarding Civil Process Fee	06/13/2018

EXHIBIT E

<u>Party</u>	<u>Counsel</u>	<u>Address</u>	<u>Phone</u>
Diane Johnson	Ross Stomel Shrader & Associates, L.L.P.	3900 Essex Lane, Suite 390 Houston, TX 77027	(713) 338-9094
EECI, Inc., f/k/a Ebasco Services, Inc.	Edward Slaughter Hawkins Parnell Thackston & Young, L.L.P.	4514 Cole Ave., Suite 500 Dallas, TX 75205	(214) 780-5100